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ABSTRACT

Addressing educators and citing the California Penal Code, this booklet discusses the legal responsibilities of persons in child care situations regarding incidents of suspected child abuse. Included are: (1) a definition of child abuse and neglect; (2) reporting procedures including liability of failure to report and immunity of the reporting person; (3) physical and behavioral indicators in children who suffer from physical abuse or neglect, sexual abuse, and emotional abuse or deprivation; and (4) noticeable parental behaviors which may indicate abuse. (EM)

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CHILD ABUSE

THE EDUCATOR'S RESPONSIBILITIES

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INTRODUCTION

Did you know?

According to the National Center on Child Abuse and Neglect:

- Over 1,000,000 children are abused or neglected each year.
- Of these, 100,000-200,000 are physically abused.
- 60,000-100,000 are sexually abused.
- The remainder are neglected.
- Over 2,000 children die each year because of abuse or neglect by their adult caretakers.
- 84 percent of juvenile delinquents report a previous history of child abuse/neglect.

Parents often believe that their children are private property and whatever happens in the home is no one else's concern. This carte blanche philosophy implies that everything happening within the privacy of the home is acceptable, including child abuse. Accordingly, educators often believe they have no right to "pry" into a student's family problems and, consequently, often ignore indications of child abuse.

Contrary to the above philosophy, California law declares that the treatment of children - both inside and outside the home - is a valid public concern. Furthermore, child abuse laws (Penal Code Section 11166(a)) specifically require certain designated persons to report any suspected child abuse. Educators are among those persons required to report.

This responsibility to report is not optional; it is mandatory. We view this as a moral obligation as well as a legal responsibility.

Won't you please take a few moments to review this pamphlet and learn what you can do to prevent child abuse. Educators probably have the best opportunity to identify a problem before it becomes a statistic.

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WHAT IS CHILD ABUSE?

Child abuse is any act of omission or commission that endangers or impairs a child's physical or emotional health and development. This includes:

- Physical abuse or corporal punishment resulting in a traumatic condition.
- Emotional abuse.
- Emotional deprivation.
- Physical neglect and/or inadequate supervision.
- Sexual abuse and/or exploitation.

Child abuse usually is not a single act of physical abuse, neglect or molestation, but is typically a repeated pattern of behavior.

A child abuser is most often a parent, stepparent or other caretaker of a child. He or she can be found in all cultural, ethnic, occupational and socio-economic groups.

Regardless of whom child abusers may be, the major responsibilities of school personnel are (1) to identify incidents of suspected child abuse and (2) to comply with laws requiring reporting of suspected abuse to the proper authorities. Determining whether or not the suspected abuse actually occurred is not the responsibility of the educator. Such determination and follow-up investigation will be made by a child protective agency. Again, the responsibility, by law, of the educator is to report every incident of suspected child abuse - not to substantiate the report.

LEGAL RESPONSIBILITY OF SCHOOL PERSONNEL

Legal responsibility

Under California law, persons specified in Penal Code Section 11165(h) are subject to criminal and civil liability if they fail to report suspected abuse to authorities immediately by telephone and with a written follow-up report submitted within 36 clock hours of their first awareness of the incident. School personnel, referred to as "child care custodians," are among those professionals who are responsible to report. This requirement applies to any public or private school. School personnel include all those listed below:

- Teacher.
- Supervisor of child welfare and attendance.
- Certificated pupil personnel employee of any public or private school.
- Headstart teacher.
- Employee of a child care institution including, but not limited to, foster parents, group home personnel and personnel of residential care facilities.
- School superintendent and principal (administrative officer).
- Registered nurse.

Reporting procedure

Penal Code Section 11166(a) provides:

" . . . any child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. For the purposes of this article, 'reasonable suspicion' means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse." (Emphasis added.)

In addition, Penal Code Section 11167 provides:

"(a) A telephone report of suspected child abuse shall include the name of the person making the report, the name of the child, the present location of the child, the nature and extent of the injury, and any other information, including information that led such person to suspect child abuse, requested by the child protective agency.

"(b) Information relevant to the incident of child abuse may also be given to an investigator from a child protective agency who is investigating the suspected case of child abuse.

"(c) . . . The identity of all persons who report under this article shall be confidential and disclosed only by court order or between child

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protective agencies . . . for certain court actions or when the reporting party waives confidentiality." (Emphasis added.)

The reporting person must immediately telephone the report to a child protective agency (which means a police or sheriff's department, a county probation department or a county welfare department), and follow with a written report within 36 hours. Reports must be made on Department of Justice forms (available through your school). If the forms are not available, they can be obtained by writing or calling a child protective agency.

The duty to report child abuse is an individual duty and no supervisor or administrator may impede or inhibit such reporting duties. Furthermore, no person making such a report shall be subject to any sanction for making such report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with the provisions of the Penal Code and do not require disclosure of confidential information except as authorized by Penal Code Section 11167(c).

When two or more persons who are required to report jointly have knowledge of a suspected instance of child abuse, and when there is agreement among them, the telephone report may be made by any one of them who is selected by mutual agreement, and a single report may be made and signed by the person selected. However, if any person who knows or should know that the person designated to report failed to do so, that person then has a duty to make the report.

Liability of reporting person

Penal Code Section 11172(b) states, in pertinent part:

"(b) Any [mandated reporter] who fails to report . . . an instance of child abuse which he or she knows to exist or reasonably should know to exist is guilty of a misdemeanor and is punishable by confinement in the county jail for a term not to exceed six months or by a fine of not more than five hundred dollars (\$500) or by both." (Emphasis added.)

Failure to report suspected child abuse may result in civil liability as well. A person required to report suspected abuse who fails to do so may be held liable in civil damages for any subsequent injury to the child (Landeros v. Flood (1976) 17 Cal.3d 399).

Immunity of reporting person

PERSONS REQUIRED TO REPORT, SUCH AS EDUCATORS, ARE NOT LIABLE EITHER IN CIVIL DAMAGES OR FOR CRIMINAL PROSECUTION FOR REPORTING AS REQUIRED BY LAW. OTHER PERSONS ARE NOT LIABLE EITHER CIVILLY OR CRIMINALLY UNLESS IT CAN BE PROVEN THAT A FALSE REPORT WAS MADE, AND THAT THE PERSON KNEW OR SHOULD HAVE KNOWN THAT THE REPORT WAS FALSE. (Penal Code Section 11172(a).)

HOW DO I RECOGNIZE THE ABUSED CHILD?

Most children attend school; therefore, school personnel, particularly teachers, are vital to the process of identifying child abuse. Your special situation of seeing children on a day-to-day basis can contribute significantly to combating the problem. The protection of children is a moral as well as a legal responsibility of all school personnel.

The protection of a child requires being alert for signs of a child's need for help. Teachers frequently come in contact with children who are physically, emotionally and sexually abused or who are victims of neglect. As a teacher, you must become aware of the dynamics of child abuse and be prepared to take an active role in its detection and elimination.

Indicators of suspected abuse

One of the most important grounds for suspicion is the one that is discussed the least: when a child tells someone. It is essential that the child not be ignored, nor the gravity of the situation minimized. It should be remembered, too, that when a child tells a particular person who is an individual required to report child abuse (all educators), that communication is not privileged. That individual, BY LAW, MUST report what the child has related to him or her. This requirement applies to any type of abuse communicated. Educators who report suspected child abuse as required by law cannot be held liable either civilly or criminally for making such reports. (See "Liability of reporting person.")

Other indicators of suspected abuse follow below.

Physical abuse:

BRUISES

- Unexplained bruises and welts located on the face, lips, mouth, torso, back, buttocks or thighs which often reflect the shape of the object used to inflict the injury, e.g., electric cords, belt buckles and sticks. ("Normal" bruises or welts do not usually cause lacerations, deep discoloration or other trauma to the extent injuries from abuse do.)
- Bruises which regularly appear after absences, weekends or vacations.

BURNS

- Burns in unusual places, especially on the soles of the feet, palms of the hands, the back and the buttocks. (These are often caused by cigars or cigarettes.)
- Burns resembling sock-like or glove-like markings on the hands or feet, or "doughnut" burns on the buttocks or genital area. (These burns are caused by forced immersion in scalding liquids.)
- Appliance or tool burns which leave a pattern mark of the object (iron, electric burner, fireplace tool, etc.).
- Rope burns on the arms, legs, neck or torso. (These appear when children are tied to beds or other structures.)

FRACTURES AND OTHER INJURIES

- Unexplained fractures (particularly to the nose or facial structure) in various stages of healing. (Fractures which are a result of child abuse frequently cannot be explained by one episode of trauma. They often have not healed properly and have some additional patterns of stress in terms of growth that are evident upon examination.)
- Multiple fractures appearing in different parts of the body (ribs, vertebral compression or spiral fractures).
- Injuries which are in various stages of healing, are clustered or form regular patterns over the same injured area.
- Unexplained abrasions and lacerations to the mouth, lips, gums, eyes and external genitalia.
- Unexplained swelling of the abdomen, localized tenderness and constant vomiting.
- Human bite marks, especially when they are recurrent and/or appear to be adult size.

BEHAVIORAL ALERT SIGNS OF PHYSICAL ABUSE

- Unexplained behavior patterns, such as fear of adult contact, apprehension when other children cry, fear of parents or fear of going home.
- Chronic tardiness, poor attendance, increased withdrawal, preoccupation or simply the need to talk to someone.
- Inability to establish good peer relations and often aggressive acting-out behavior.
- Restlessness or inability to sit down.

Physical neglect

PHYSICAL INDICATORS

- Constant hunger.
- Poor hygiene.
- Inappropriate dress for weather conditions.
- Unattended physical or medical needs.
- Lack of supervision in especially dangerous situations or activities over long periods of time.

BEHAVIORAL INDICATORS

- Alcohol or drug abuse.
- Begging for or stealing food.
- Making statements which indicate there is no guardian or parent at home.
- Extended stays at school (early arrival or late departure).
- Constant fatigue, listlessness or falling asleep in class.

Sexual abuse

PHYSICAL INDICATORS

- Difficulty in walking or sitting.
- Torn, stained or bloody underclothing.

- Complaints of pain or itching in the genital area.
- Bruises or bleeding in external genitalia, vaginal or anal area.
- Venereal disease in the genital area, mouth or eyes.

BEHAVIORAL INDICATORS

- Unwillingness to change clothes for gym class or to participate in physical education class.
- Bizarre, sophisticated or unusual sexual behavior or knowledge in younger children, including withdrawal, fantasy or infantile behavior.
- Verbal reports by the child of sexual relations with a caretaker or parent.

Emotional abuse

Just as physical injuries can scar and incapacitate a child, emotional cruelty can similarly cripple and handicap a child emotionally, behaviorally and intellectually. Obviously, individual incidents of emotional abuse are difficult to identify and/or recognize and, therefore, are not mandated reporting situations. However, the interests of the child should be primary, and if it is suspected that the child is suffering from emotional abuse, it should be reported. Furthermore, if there is an indication that emotional abuse is being inflicted willfully and causing unjustifiable mental suffering, reporting is required. Regardless of whether the situation is one requiring mandatory reporting or not, cases should be diverted to some sort of treatment as soon as possible.

BEHAVIORAL INDICATORS

- Withdrawn, depressed, apathetic behavior.
- Antisocial or "acting out" behavior.
- Overly rigid in conforming to instruction of authority figures.
- Displaying other signs of emotional turmoil (repetitive, rhythmic movements, inordinate attention to details, no verbal or physical communication to others).
- Unwittingly makes comments about own behavior: "Daddy always tells me I'm bad."

Emotional deprivation

Like emotional abuse, emotional deprivation can leave serious scars on a child. It, too, is difficult to recognize or identify, and is only a mandated reporting situation if willfully intended and if serious mental suffering results. However, the same precautions apply: In the best interests of the child, suspected emotional deprivation should be reported and/or referred for some type of intervention treatment.

PHYSICAL INDICATORS

- Speech disorders.
- Lag in physical development, frailty, refusal to eat.
- Failure to thrive.

BEHAVIORAL INDICATORS

- Thumb or lip sucking (habit disorders).
- Constantly "seeking out" or "pestering" other adults for attention and affection.
- Attempted suicide.
- Antisocial or destructive behavior.
- Sleep disorders, inhibition of play, neurotic traits.
- Behavior extremes (such as compliant/demanding, passive/aggressive).
- Hysteria, phobias or compulsive traits.

Parental attitudes

SOME NOTICEABLE INDICATORS IN PARENTAL BEHAVIOR THAT MAY INDICATE ABUSE

- Blaming or belittling child.
- Overly defensive or abusive reaction when approached about problems concerning the child.
- Apathetic or unresponsive attitude.
- Showing little concern about the child - as evidenced by lack of interest in what child is doing in school and lack of participation on parent's or child's part in school activities.
- Finding nothing good or attractive in the child.

CONCLUSION

The protection of a child is everyone's concern. We hope this information will assist you in detecting child abuse situations. Only through a concerted effort can we protect our children.